STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED September 22, 2005
v	No. 255423 Wayne Circuit Court
DERRICK WARDELL MASON, Defendant-Appellant.	LC No. 03-014153-01

Before: Hoekstra, P.J., and Gage and Wilder, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of first-degree premeditated murder, MCL 750.316, and possession of a firearm during the commission of a felony, MCL 750.227b. He was subsequently sentenced to a term of life imprisonment for the murder conviction, to be preceded by a two-year term for his conviction of felony-firearm. Defendant appeals as of right. We affirm.

This case arises from a shooting death prompted by a brief altercation between defendant and one of a group of men. On appeal, defendant argues that the evidence at trial was insufficient to support that the killing constituted first-degree premeditated murder. We disagree. When reviewing a claim of insufficient evidence, this Court reviews the record de novo to determine whether, when viewed in the light most favorable to the prosecution, a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Fennell*, 260 Mich App 261, 270; 677 NW2d 66 (2004); *People v Lueth*, 253 Mich App 670, 680; 660 NW2d 322 (2002).

In order to convict defendant of first-degree premeditated murder, the prosecution was required to prove that defendant intentionally killed the victim and that the act of killing was premeditated and deliberate. MCL 750.316; *People v Kelly*, 231 Mich App 627, 642; 588 NW2d 480 (1998). With respect to these elements, defendant first argues there was insufficient evidence of an intent to kill, contending that he fired the gun with the intent only to intimidate or scare the men. However, questions of intent are for the trier of fact, and because of the difficulty of proving an actor's state of mind, minimal circumstantial evidence of intent is sufficient to support a conviction. *Fennell*, *supra* at 270-271; see also *People v Kieronski*, 214 Mich App 222, 232; 542 NW2d 339 (1995). To this end, "[t]he intent to kill may be proved by inference from any facts in evidence." *People v McRunels*, 237 Mich App 168, 181; 603 NW2d 95 (1999). Here, when viewed in the light most favorable to the prosecution, the evidence at trial indicates

that defendant returned to the scene of an earlier argument carrying an assault rifle. From approximately two houses away, defendant then raised the rifle and, after shouting "now what bitch," fired between five and six shots at the group, which included the man with whom defendant had recently argued. The victim was shot in the head while attempting to flee, and died later that day. On these facts, a rational jury could find that defendant was angry after the argument and returned to the scene of that quarrel with the intent to kill the man with whom he had argued.[1] *Fennell*, *supra* at 270.

Defendant also argues, however, that there was insufficient evidence of premeditation and deliberation. "To premeditate is to think about beforehand; to deliberate is to measure and evaluate the major facets of a choice or problem." *People v Plummer*, 229 Mich App 293, 300; 581 NW2d 753 (1998). Thus, to establish premeditation and deliberation, "'[s]ome time span between [the] initial homicidal intent and ultimate action is necessary.'" *People v Tilley*, 405 Mich 38, 45; 273 NW2d 471 (1979), quoting *People v Hoffmeister*, 394 Mich 155, 161; 229 NW2d 305 (1975). Like the intent to kill, the elements of premeditation and deliberation may be inferred from all the facts and circumstances surrounding the killing. *Kelly*, *supra*. This includes the parties' prior relationship, the actions of the accused both before and after the crime, and the circumstances of the killing itself, including the weapon used by defendant and the location of the wounds inflicted. *Plummer*, *supra*.

As noted above, the evidence at trial indicates that the killing at issue here was prompted by a brief argument between defendant and one of a group of men. The evidence further indicates, however, that between fifteen and twenty-five minutes elapsed between the time of this argument and defendant's armed return to the scene. This lapse of time, when considered in conjunction with defendant's choice of weapon, the number of shots fired, and the location of the fatal wound suffered by the victim, support a finding that the killing at issue here was both premeditated and deliberate. Cf. *Plummer*, *supra* at 303-304 (evidence of premeditation and deliberation found to be insufficient where the fatal shots were fired during an "ongoing fray").

Finally, defendant argues that the trial court erred in denying defendant's request that the jury be instructed on the lesser offense of manslaughter. We review this claim of instructional error de novo. See *People v Walls*, 265 Mich App 642, 644, 697 NW2d 535 (2005).

Because voluntary manslaughter is a necessarily included lesser offense of murder, defendant was entitled to such instruction only if supported by a rational view of the evidence. *People v Mendoza*, 468 Mich 527, 542; 664 NW2d 685 (2003). "[T]o show voluntary manslaughter, one must show that the defendant killed in the heat of passion, the passion was caused by adequate provocation, and there was not a lapse of time during which a reasonable person could control his passions." *Id*. at 535-536. Here, the alleged provocation consisted of a mere exchange of verbal insults. Words alone, however, do not generally provide provocation adequate for voluntary manslaughter. *People v Pouncey*, 437 Mich 382, 391; 471 NW2d 346

[1] Under the doctrine of transferred intent, it is of no consequence that defendant intended the murder of the man with whom he initially argued, but instead shot and killed the victim. *People v Youngblood*, 165 Mich App 381, 388; 418 NW2d 472 (1988).

(1991). Moreover, the fifteen to twenty-five minute lapse of time between this exchange of words and defendant's armed return to the scene was more than sufficient for a reasonable person to regain control of his passions following such a brief verbal dispute. See *id*. at 386, 392. The trial court did not err by refusing to instruct the jury on manslaughter.

In any event, even had the instruction been supported by the facts, "where a defendant is convicted of first-degree murder, and the jury rejects other lesser-included offenses, the failure to instruct on voluntary manslaughter is harmless." *People v Sullivan*, 231 Mich App 510, 520; 586 NW2d 578 (1998). Here, the trial court instructed the jury on the law concerning both first- and second-degree murder. Because the jury rejected the lesser included offense of second-degree murder, any error arising from the trial court's refusal to also instruct on voluntary manslaughter was harmless. *Id*.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Hilda R. Gage
/s/ Kurtis T. Wilder